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attributed to the company, yet it will be chargeable with such knowledge and its consequences. *Wachsmann v. Columbia Bank* (Com. Pl.), 8 Misc. Rep. 280, 28 N. Y. Supp. 711, 26 N. Y. Supp. 855; *First National Bank v. Allen*, supra; *Dredging Company v. The Bank of the State of Delaware*, supra; *Hardy v. Chesapeake Bank*, 51 Md. 562. W. A. H.

INVALID CONTRACTS FOR CONTINGENT FEES.—It is not unusual that agreements between attorneys and clients providing for contingent fees contain a stipulation to the effect that no settlement of the controversy concerning which there is a bargain for fees shall be made by the client without the attorney's consent.

In the recent case of *Davy et al. v. Fidelity and Casualty Ins. Co.*, 85 N. E. 504, the Supreme Court of Ohio condemns such an agreement as champertous and, by the citation of many Ohio decisions, "demonstrates that this court has always maintained a consistent and unambiguous attitude in regard to contracts of the kind which we have in this case." The court holds that the illegal stipulation renders the whole contract illegal and indivisible, and that the illegal stipulation cannot be ignored and the other provisions of the contract enforced.

In a number of other recent decisions substantially the same doctrine has been announced. *Davis v. Webber*, 66 Ark. 190, 74 Am. St. Rep. 81, 45 L. R. A. 196; *North Chicago St. R. R. Co. v. Ackley*, 171 Ill. 100, 49 N. E. 222, 44 L. R. A. 177; *Davis v. Chase*, 159 Ind. 242, 64 N. E. 88, 95 Am. St. Rep. 294. In this last case the contract provided for a contingent fee of fifty per cent of the amount recovered, and the client agreed that he would "not enter into any compromise or accept any sum of money in settlement of said claim unless said [attorney] is present and directs said settlement," and, while an attempt was made by counsel to distinguish this clause from those that distinctly provided that the client could not settle without the attorney's consent, the court held that the provision was invalid and was fatal to the whole contract.

The New York Court of Appeals, in *In re Snyder*, 190 N. Y. 66, 82 N. E. 742, states some of the reasons for its decision that such a contract is invalid, as follows: "In the first place, a decision upholding such a contract would confer upon one person occupying a position of trust toward another unusual power over the latter in the control and management of his own property, for we must not forget that the attorney has only a lien upon the client's cause of action, which still remains the property of the latter. It is not too much to assume that such power would at times be the source of abuse as between the two parties. But more important than any such personal and private considerations is the one of public concern that such contracts would prove added obstacles to that quieting of disputes, and to that adjustment and settlement of litigation which always has been and always should be favored by the acts of legislatures, the decisions of courts, and the expressions of public opinion; for, in my judgment, there is no need of

long argument to demonstrate that such contracts would prove such obstacles."

In spite, however, of the many good reasons for holding such stipulations illegal as contrary to public policy, some courts have regarded them as valid, or at least as not fatal to the whole contract (See *Hoffman v. Vallejo*, 45 Cal. 564; *Taylor v. St. Louis Transit Co.*, 198 Mo. 715, 731; *Smits v. Hogan*, 35 Wash. 290; *Granat v. Kruse*, 114 Ill. App. 488).

In the recent New York decision cited above (*In re Snyder*) Judge BARTLETT, dissenting, says: "If it be the fact that this court has never passed upon the validity of such a clause in a contract, I am of opinion that it is valid. I see no reason why counsel entering upon a long and difficult litigation for an impecunious client should not protect himself against a premature and ill-advised settlement of the litigation by the client. These contracts are under the strict supervision and scrutiny of the court, and I am unable to see anything in contravention of public policy when this clause appears to have been entered into in good faith by both parties. In the absence of such a clause, it has been frequently held in this state and elsewhere that the client may negotiate an honest and reasonable settlement at any time. There is no reason, in my judgment, why this right cannot be waived."

While "impecunious clients," as well as clients not impecunious but simply speculative, may sometimes treat unjustly counsel who have aided them, we believe that the best interests of both the public and the profession will be served by upholding the doctrine of the principal case.